

1 Manuel Corrales, Jr., SBN 117647
2 **Attorney at Law**
3 11753 Avenida Sivrita
4 San Diego, CA 92128
5 Phone: (858) 521-0634
6 Fax: (858) 521-0633

7 Attorney for Plaintiff
8 CALIFORNIA VALLEY MIWOK TRIBE

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 CALIFORNIA VALLEY MIWOK TRIBE,
12 Plaintiff,
13 v.
14 THE CALIFORNIA GAMBLING
15 CONTROL COMMISSION; and DOES
16 1 THROUGH 50, Inclusive,
17 Defendants.

Case No. 08 CV 0120 BEN AJB

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR CHANGE
OF VENUE TO THE EASTERN
DISTRICT OF CALIFORNIA,
SACRAMENTO DIVISION**

DATE: March 10, 2008
TIME: 10:30 A.M.
COURTROOM: 3
LOCATION: 940 Front Street
San Diego, A 92101
JUDGE: Hon. Roger J. Benitez

18
19 Plaintiff California Valley Miwok Tribe ("Miwok Tribe" or Plaintiff) submits the
20 following memorandum of points and authorities in opposition to Defendant California
21 Gambling Control Commission's ("the Commission") Motion for Change of Venue to the
22 Eastern District of California, Sacramento Division.

23 **I.**

24 **INTRODUCTION**

25 The Commission concedes that venue was proper here in San Diego County.
26 (Defendant's Points and Authorities, pg. 2 lines 2-3.) However, since there is no subject
27 matter jurisdiction, the Commission's motion will be moot.

28 The Compact does not require or "establish" that this dispute be venued in

1 Sacramento County. In fact, State law specifically permits it to be venued here in San
 2 Diego County.

3 **II.**

4 **ARGUMENT**

5 **A. THIS CASE IS NOT SUBJECT TO DISCRETIONARY**
 6 **“CONVENIENCE” TRANSFER UNDER 28 USC § 1404(a)**

7 Transfer under 28 USC § 1404(a) “for the convenience of parties, witnesses and in
 8 the interest of justice” is discretionary. However, before the court can even exercise any
 9 discretion to transfer, it must be shown that the proposed transferee court is one in which
 10 the action could have been commenced originally, *i.e.*, one “where it might have been
 11 brought.” 28 USC § 1404(a). This has been interpreted to mean that: (1) the proposed
 12 transferee court would have had subject matter jurisdiction; (2) defendants would have
 13 been subject to personal jurisdiction; and (3) venue would have been proper, *Hoffman v.*
 14 *Balski* (1960) 363 U.S. 335, 343-344, 80 S.Ct. 1084, 1089-1090.

15 Based upon these facts, transfer to Sacramento would be improper. As shown in
 16 Plaintiff’s Motion to Remand, there is no federal question jurisdiction and thus the case
 17 could not have been commenced in the Eastern District of California, Sacramento, to
 18 begin with. The dispute involves only the Commission’s duty to disburse RSTF under
 19 state law, and a declaratory relief action to determine that duty. The suit does not ask the
 20 Court to make any determination as to whether the Miwok Tribe is a “federally recognized
 21 government.” Instead, the Plaintiff’s suit simply asks the Court to determine what the
 22 Commission’s duties and responsibilities are as to the RSTF money, based upon
 23 undisputed fact, including the fact that the Miwok Tribe is “unorganized” and yet the
 24 Bureau of Indian Affairs (“BIA”) still recognizes Sylvia Burley as an official representative
 25 of the Miwok Tribe, albeit “unorganized”. If those facts are true, then Plaintiff contends
 26 that the Commission has a duty to continue making RSTF payments, in the same manner
 27 as it has done in the past. Accordingly, no federal question jurisdiction is implicated, and
 28 the case therefore could never have been brought in the U.S. District Court in

1 Sacramento, or any other federal district court.

2 As a result, the issue of convenience of the “witnesses” or “parties” never comes
3 into play and is thus irrelevant.

4 Because there is no subject matter jurisdiction, the Commission’s Motion to
5 Transfer should be denied on this reason alone.

6 **B. THE COMPACT DOES NOT “ESTABLISH A PREFERENCE”**
7 **FOR ADJUDICATING PLAINTIFF’S CLAIMS IN SACRAMENTO**

8 Inexplicably, the Commission repeatedly misquotes the Compact, falsely saying in
9 its moving papers that the Compact ‘states a preference that this action should be
10 brought in the jurisdiction in which the Plaintiff resides.’ (Defendant’s Motion, pg. 2, lines
11 6-8.) It cites Section 11.2.1(c.) of the Compact and represents the Court that it:

12 . . . plainly establish[es] a preference that a breach of
13 compact action such as this be tried in the district in
14 which the tribe alleging a breach is located.
(Emphasis added.)

15 (Defendant’s Points and Authorities, pg. 3, lines 7-9); (see also Defendant’s Points and
16 Authorities, pg. 3, line 1, and lines 20-21). These state in relevant part as follows:

17 Either party may bring an action in federal court . . .
18 for a declaration that the other party has materially
19 breached this Compact . . . In the event a federal
20 court determines that it lacks jurisdiction over such an
action, the action may be brought in the superior court
for the county in which the Tribe’s Gaming Facility is
located . . . (Emphasis added.)

21 (Compact, pg. 40, Section 11.2.1(c)). First of all, this section of the Compact does not
22 state that Plaintiff’s suit must be brought in the district where the tribe is located.
23 Secondly, and most importantly, the language of this Section clearly and unequivocally
24 applies only to the State as Compact Tribes, not non-Compact Tribes. Plaintiff is not a
25 party to the Compact, and therefore this section does not apply to it. Non-Compact
26 Tribes by their very definition are Tribes, like Plaintiff, who do not have any gaming
27 facilities, or who operate fewer than 350 devices. Section 4.3.2.1(b).3.2(a)(i). That is why
28 the RSTF was set up. The Compact Tribes who generate money from their respective

1 gaming facilities (casinos) pay into the RSTF, so that Non-Compact Tribes, like Plaintiff,
 2 can share in profits. But the Non-Compact Tribes are not parties to the Compact, and
 3 because many of them, like Plaintiff, have no gaming facilities, the phrase “action may be
 4 brought in the superior court for the county in which the Tribes’ Gaming Facility is located”
 5 cannot and does not apply to them. (see pg. 2, para 6 of the complaint.) Thus, the
 6 Commission’s statement that the Compact (plainly” establishes that Plaintiff’s suit must be
 7 brought in Sacramento County, because that is where Plaintiff’s “gaming facility is
 8 located”, is misleading and false. Plaintiff has no gaming facility. (Complaint, pg. 2, para
 9 6.) Section 11.2.1(c) does not apply to Plaintiff, a Non-Compact Tribe with no gaming
 10 facility.

11 **C. IF THIS CASE IS REMANDED, THE COMMISSION’S**
 12 **MOTION FOR CHANGE OF VENUE WILL BE MOOT**

13 Obviously, should this Court grant Plaintiff’s Motion for Remand, the Commission’s
 14 Motion to Transfer to Sacramento will be moot. It is for this reason that Plaintiff requests
 15 the Court first decide the remand motion.

16 **D. THE COMMISSION HAS FAILED TO MEET ITS**
 17 **BURDEN OF SHOWING FACTS SUPPORTING**
 18 **IT’S MOTION**

19 A 28 USC § 1404(a) motion for “convenience” transfer must be supported by a
 20 declaration, or affidavit establishing admissible facts pertaining to the residence of the
 21 parties, the location of witnesses, physical evidence, etc. Conclusory declarations are not
 22 sufficient. *Stop-A-Flat Corp. v. Electra Start of Michigan, Inc.* (ED PA 1981) 507 F.Supp.
 23 647, 652. The Commission’s motion is devoid of any such admissible evidence, and no
 24 declaration has been attached, as is required.

25 On this basis alone, the motion should be denied. *Heller Fin’l, Inc., v. Midwhey*
 26 *Powder Co.* (7th Cir. 1989) 883 F.2d 1286, 1293.

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III.

CONCLUSION

For the foregoing reasons, the Commission's Motion for Change of Venue under 28 USC § 1404(a) should be denied, or otherwise determined to be moot.

DATED: February 22, 2008

s/ Manuel Corrales, Jr.
Manuel Corrales, Jr.
Attorney for Plaintiff
The California Valley Miwok Tribe

CERTIFICATE OF SERVICE

Case Name: California Valley Miwok Tribe v. California Gambling Control Commission

Court: United States District Court, Southern District
Case No. 08-CV-0120 BEN AJB

I Declare: On **February 22, 2008**, I filed via e-mail the following documents:

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR CHANGE OF
VENUE TO THE EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO
DIVISION**

ELECTRONIC MAIL NOTICE LIST

I have caused the above-mentioned document(*s) to be electronically served on the following person(s) who are currently on the list to receive e-mail notices for this case:

Peter.Kaufman@doj.ca.gov

MANUAL NOTICE LIST

The following are those who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing):

NONE

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on **February 22, 2008**, at San Diego, California.

MANUEL CORRALES, JR.

s/ Manuel Corrales, Jr.

Declarant

Signature